IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13056 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHARTIBEN B. PATEL,M.D.,FICON LEASE & FINACE LTD - Petitioner(s)

Versus

MANAGING DIRECTOR, NAVINCHANDRA RAICHANDBHAI & 1 - Respondent(s)

==========

Appearance :

MR RC JANI for Petitioner(s) : 1,
SERVED BY AFFIX.-(R) for Respondent(s) : 1,
MS JIRGA D JHAVERI for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 30/09/2005

ORAL JUDGMENT

1. Heard the learned advocate for the petitioner, Mr.R.C. Jani, Ms.Jirga D. Jhaveri, learned advocate for respondent no.2 and Mr.Navinchandra Raichandbhai Thakkar, respondent no.1 herein in person. The present Special

Civil Application is filed challenging the impugned order dated 16.07.2004 passed by the learned Judge of Court No.10, City Civil Court, Ahmedabad, below Exhibit 1 in Civil Misc. Application No.862 of 2001.

2. Mr.Jani, learned advocate pointed out that Civil Misc. Application No.862 of 2001 was filed by the present respondent no.1, impleading only Ahmedabad Stock Exchange as respondent. The applicant therein (respondent no.1 herein) did not join the present petitioner as party-respondent though the relief claimed in the application, was directly affecting the petitioner and therefore, respondent no.1 ought to have joined the petitioner as party-respondent. Besides, Mr.Jani submitted that the Arbitration Committee has taken into consideration all the relevant material and has thereafter recorded that, 'having considered all the relevant aspects of the case it is found that the case is not sustainable'. A case 'being maintainable' or 'sustainable' are two different things. It is not said by the Arbitration committee that the case is not maintainable. The Arbitration committee has said that the case is not sustainable. This means that the committee has not found any substance in the case. Be that as it may, the basic question remains

that order under challenge dated 16.07.2004 is passed in a Civil Misc. Application wherein the present petitioner is not impleaded as party respondent.

3. The Party-in-Person, Mr.Navinchandra Raichandbhai Thakkar instead of answering the query put by the Court as to why the petitioner was not impleaded as party respondent submitted that the Arbitration Committee has passed an unjust order and there are glaring defects in the order. The present Special Civil Application is filed on the aforesaid ground of not impleading the petitioner as respondent and therefore, the Court should not have passed an order adversely affecting the petitioner.

4. In view of the aforesaid discussion the present Special Civil Application is allowed. Order dated 16.07.2004 passed by the learned Judge of Court No.10, City Civil Court, Ahmedabad below Exhibit 1, in Civil Misc. Application No.862 of 2001 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(RAVI R. TRIPATHI, J.)

karim